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the policy, but in no event should he dispose of the proceeds by will. The testator did not designate another beneficiary. The beneficiaries under these three policies were also the legatees and devisees of the remaining two-thirds of testator's estate, and elected to take under his will.

Held: The testator intended to give to the legatee first above mentioned one-third of all four of his life-policies.

JAMMISON BY & C. V. CHESAPEAKE & OHIO RAILWAY Co.—Decided at Richmond, December 5, 1895.—*Keith*, P :

1. RAILROADS—*Failure to stop train—duty of passenger—falling from a running train—contributory negligence.* If a passenger train fails to stop at a station to which a passenger has purchased a ticket, it is the duty of the passenger to retain his seat until he arrives at the next station at which the train stops; and, if he feels aggrieved, to institute his action against the company for any loss or injury he may have sustained by reason of the failure to stop the train at the proper station. But if he fails to do this, and in passing from one coach to another in search of the conductor to get him to stop the train, he is thrown from the train and injured, his negligence is the proximate cause of the injury and he cannot recover damages of the company therefor.

2. EVIDENCE—*Declarations—admissions—res gestæ.* Under the evidence in this case the declarations of the conductor of the train, made shortly after the accident happened to the passenger, as to where he was when the accident occurred, are not admissible in evidence to bind the company. They are not competent as admissions for want of authority to make them, nor as part of the *res gestæ*, because not sufficiently connected with the accident in point of time and circumstance; and in no event does their exclusion constitute reversible error, as the declarations are not certified so that the appellate court can judge of their relevancy and value.

BARNES V. COMMONWEALTH.—ABERNATHY V. COMMONWEALTH.—

MARABLE V. COMMONWEALTH.—Decided at Richmond, December 12, 1895.
Buchanan, J :

1. RECORDS—*Amendments during the term and after.* During the term of a court at which a judicial act is done the record remains in the breast of the court, and may be altered or amended; but after the adjournment of the term, amendments can only be made in cases in which there is something in the record by which they can be safely made. Amendments cannot be made after the term upon the individual recollection of the judge, or upon proofs *aliunde*.

2. APPELLATE COURT—*Objection not made in trial court—jurors.* An objection that jurors summoned in a criminal case were not free from exception cannot be made in the appellate court, where it does not appear that the objection was made in the trial court, or that the accused was injured thereby. Acts 1893-'4, Ch. 43.

3. CRIMINAL PROCEDURE—*Joint indictment—separate trial—presumption when record silent.* Persons jointly indicted cannot be tried jointly without the concurrent election of themselves and the attorney for the Commonwealth. Either has the right to demand a separate trial. But even if it were otherwise, and the